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INTRODUCTORY

These regulations deal with the employers' tax, the employees' tax, and the employee representatives' tax, imposed by the Carriers Taxing Act of 1937, approved June 29, 1937 (Public, No. 174, Seventy-fifth Congress).

Chapter I defines terms that are used in the Act and in these regulations.

Chapter II deals with the employees' tax.

Chapter III deals with the employers' tax.

Chapter IV deals with the employee representatives' tax.

Chapter V deals with returns and payment of tax.

Chapter VI deals with the adjustment of employees' tax and employers' tax.

Chapter VII deals with credits and refunds.

Chapter VIII contains miscellaneous provisions relative to assessment and collection of underpayments, jeopardy assessment, interest, penalties, and records.

The applicable provisions of the Act, as well as certain applicable provisions of internal-revenue laws of particular importance, will be found in the appropriate places in, and are to be read in connection with, these regulations. The sections of law referred to in these regulations are sections of the Carriers Taxing Act of 1937, unless otherwise stated.

CHAPTER I—DEFINITIONS

SECTION 1 OF THE ACT

That as used in this Act—

(a) The term "employer" means any carrier (as defined in subsection (i) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property

by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: *Provided, however,* That the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Commissioner of Internal Revenue, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations.

(b) The term "employee" means any person in the service of one or more employers for compensation: *Provided, however,* That the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual is in the employment relation to a carrier if he is on furlough, subject to call for service within or outside the United States and ready and willing to serve, or on leave of absence, or absent on account of sickness or disability; all in accordance with the established rules and practices in effect on the carrier: *Provided further,* That an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier not conducting the principal part of its business in the United States unless during the last pay-roll period in which he rendered service to it prior to said date, be rendered service to it in the United States.

(c) The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in section 1 (a), who before or after the enactment hereof was in the service of an employer as defined in section 1 (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(d) An individual is in the service of an employer whether his service is rendered within or without the United States if he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, which service he renders for compensation: *Provided, however,* That an individual shall be deemed to be in the service of an employer not conducting the principal part of its business in the United States only when he is rendering service to it in the United States.

(e) The term "compensation" means any form of money remuneration earned by an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. Such term does not include tips, or the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 2 of this Act. Compensation which is earned during the period for which the Commissioner of Internal Revenue shall require a return of taxes hereunder to be made and which is payable during the calendar month following such period shall be deemed to have been paid during such period only.

(f) The term "United States" when used in a geographical sense means the States, Alaska, Hawaii, and the District of Columbia.

(g) The term "company" includes corporations, associations, and joint-stock companies.

(h) The term "employee" includes an officer of an employer.

(i) The term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.

(j) The term "person" means an individual, a partnership, an association, a joint-stock company, or a corporation.

ARTICLE 1. Definitions of miscellaneous terms.—As used in these regulations—

(a) The terms defined in the above provisions of law shall have the meanings so assigned to them.

(b) *Act* means the Carriers Taxing Act of 1937 (Public, No. 174, Seventy-fifth Congress).

(c) *Act of August 29, 1935*, means the Act entitled "An Act To levy an excise tax upon carriers and an income tax

upon their employees, and for other purposes" (Public, No. 400, Seventy-fourth Congress; 49 Stat. 974), as amended by Public Resolution No. 9, Seventy-fifth Congress, approved February 27, 1937.

(d) *Railway Labor Act* means the Act approved May 20, 1926 (44 Stat. 577), as originally adopted and any amendments thereto.

(e) *Social Security Act* means the Act approved August 14, 1935 (Public, No. 271, Seventy-fourth Congress; 49 Stat. 620).

(f) *Tax* means the employers' tax, the employees' tax, or the employee representatives' tax unless otherwise specified.

(g) *Employers' tax* means the tax imposed by section 3 of the Act.

(h) *Employees' tax* means the tax imposed by section 2 of the Act.

(i) *Employee representatives' tax* means the tax imposed by section 5 of the Act.

(j) *Secretary* means the Secretary of the Treasury.

(k) *Commissioner* means the Commissioner of Internal Revenue.

(l) *Collector* means the collector of internal revenue.

SECTION 1 (A) OF THE ACT

(a) The term "employer" means any carrier (as defined in subsection (1) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: *Provided, however,* That the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Commissioner of Internal Revenue, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations.

SECTION 1 (1) OF THE ACT

(1) The term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.

ART. 2. Who are employers.—Each of the following persons is an employer within the meaning of the Act—

(a) Any carrier, that is, any express company, sleeping-car company, or carrier by railroad, subject to Part I of the Interstate Commerce Act.

(b) Any company which

(1) is directly or indirectly owned or controlled by one or more employers as defined in paragraph (a) of this article, or under common control therewith, and

(2) operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with

(A) the transportation of passengers or property by railroad, or

(B) the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad.

As used above in this article—

The term "controlled" includes direct or indirect control, whether legally enforceable and however exercisable or exercised. The control may be by means of stock ownership, or by agreements, licenses, or any other devices which insure that the operation of the company is in the interests of one or more carriers. It is the reality of the control, however, which is decisive, not its form nor the mode of its exercise.

The term "employer" does not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation which on January 1, 1937, or thereafter, is operated by any other motive power.

(c) Any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any employer as defined in paragraph (a) or (b) of this article.

(d) Any railroad association, traffic association, tariff bureau, demurrage bureau, weighing and inspection bureau, collection agency, and other association, bureau, agency or organization controlled and maintained wholly or principally by two or more employers as defined in paragraph (a), (b), or (c) of this article and engaged in the performance of services in connection with or incidental to railroad transportation.

(e) Any railway labor organization, national in scope, which has been or may be organized in accordance with the provisions of the Railway Labor Act.

(f) Any State or National legislative committee, general committee, insurance department, local lodge or division of an employer as defined in paragraph (e) of this article established pursuant to the constitution and by-laws of such employer.

SECTION 1 (B) OF THE ACT

(b) The term "employee" means any person in the service of one or more employers for compensation: *Provided, however,* That the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual is in the employment relation to a carrier if he is on furlough, subject to call for service within or outside the United States and ready and willing to serve, or on leave of absence, or absent on account of sickness or disability; all in accordance with the established rules and practices in effect on the carrier: *Provided further,* That an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier not conducting the principal part of its business in the United States unless during the last pay-roll period in which he rendered service to it prior to said date, he rendered service to it in the United States.

SECTION 1 (D) OF THE ACT

(d) An individual is in the service of an employer whether his service is rendered within or without the United States if he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, which service he renders for compensation: *Provided, however,* That an individual shall be deemed to be in the service of an employer not conducting the principal part of its business in the United States only when he is rendering service to it in the United States.

SECTION 1 (H) AND (I) OF THE ACT

(h) The term "employee" includes an officer of an employer.

(i) The term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.

ART. 3. Who are employees—(a) General.—Within the meaning of the Act, any person is an employee if he is in the service of one or more employers (as defined in section 1 (a)) for compensation. An individual is in the service of an employer if he is subject to the continuing authority of the employer to supervise and direct the manner in which he renders services for compensation. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. The right of an employer to discharge an individual is also an important factor indicating that the individual is an employee. Other factors indicating that an individual is an employee are the furnishing of tools and the furnishing of a place to work by the employer to the individual who performs the services.

In general, if an individual is subject to the control or direction of an employer merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor. An individual performing services as an independent contractor is not, as to such services, an employee within the meaning of the Act.

Generally, an individual performing services for an employer as defined in section 1 (a) as a physician, lawyer, dentist, veterinarian, contractor, subcontractor, public stenographer, or auctioneer, who follows an independent profession, trade, or business, in which he offers his services to the public, is an independent contractor. Individuals following the callings mentioned may, however, be employees.

Whether or not an individual is an employee will be determined upon an examination of the particular facts of the case.

If an individual is an employee, it is of no consequence that he is designated as a partner, coadventurer, agent, independent contractor, or otherwise, or that he performs services on a part-time basis. The age of the individual, or the measurement, method, or designation of the remuneration, is immaterial, if he is in fact an employee.

The Act makes no distinction between classes or grades of employees. Thus, superintendents, managers, and other superior employees are employees within the meaning of the Act. An officer of an employer is an employee. A director is not an employee unless he performs services other than those required by attendance at and participation in meetings of the board of directors.

In determining whether an individual is an employee within the meaning of the Act, the citizenship or residence of the individual, or the place where the contract for the services was entered into is immaterial. If an individual performs services for an employer which does not conduct the principal part of its business within the United States, such individual shall be deemed to be in the service of such employer only to the extent that he performs services for it in the United States. In all other cases it is immaterial whether the services are performed within or without the United States.

(b) *Employees of local lodges or divisions of railway labor organizations.*—An individual who is in the service of a local lodge or division of a railway labor organization which is included as an employer under section 1 (a) (see article 2 (f)), is not an employee within the meaning of the Act unless, on or after August 29, 1935, he was either—

(1) In the service of a carrier; that is, on or after August 29, 1935, the individual must have been subject to the continuing authority of a carrier to supervise and direct the manner of the performance of services being rendered by such individual for compensation (see paragraph (a) above of this article), or

(2) In the "employment relation" to a carrier; that is, the individual on or after August 29, 1935, in accordance with established rules and practices in effect on the carrier, was on furlough subject to call for service within or without the United States and ready and willing to serve, or on leave of absence, or absent on account of sickness or disability. However, an individual shall not be deemed to have been on August 29, 1935, in the "employment relation" to a carrier not conducting the principal part of its business in the United States, unless during the last pay-roll period in which such individual rendered service to the carrier prior to such date, he rendered service to the carrier within the United States.

(For definition of "carrier," see section 1 (i) and article 2 (a).)

SECTION 1 (C) OF THE ACT

(c) The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in section 1 (a), who before or after the enactment hereof was in the service of an employer as defined in section 1 (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, as amended, and any indi-

vidual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

ART. 4. *Who are employee representatives.*—An employee representative within the meaning of the Act is—

(a) Any officer or official representative of a railway labor organization which is not included as an employer under section 1 (a) of the Act who—

(1) was in the service of an employer either before or after June 29, 1937, and

(2) is duly authorized and designated to represent employees in accordance with the Railway Labor Act, as amended.

(For railway labor organizations which are employers under section 1 (a) of the Act, see articles 2 (e) and (f).)

(b) Any individual who is regularly assigned to or regularly employed by an employee representative as defined in paragraph (a) of this article, in connection with the duties of such employee representative's office.

In determining whether an individual is an employee representative, his age, citizenship, and residence, are immaterial.

SECTION 1 (E) OF THE ACT

(e) The term "compensation" means any form of money remuneration earned by an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. Such term does not include tips, or the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 2 of this Act. Compensation which is earned during the period for which the Commissioner of Internal Revenue shall require a return of taxes hereunder to be made and which is payable during the calendar month following such period shall be deemed to have been paid during such period only.

SECTION 5 OF THE ACT

The compensation of an employee representative for the purpose of ascertaining the tax thereon shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in section 1 (a) of this Act.

ART. 5. *Definition of "compensation."*—The term *compensation* means all remuneration in money, or in something which may be used in lieu of money (scrip and merchandise orders, for example), which is earned by an individual for services performed as an employee for one or more employers, or as an employee representative. The term is not confined to amounts earned or paid for active service but includes amounts earned or paid for periods during which the employee or employee representative is absent from active service. The term does not include tips, or the voluntary payment by an employer of the employee's tax, without the deduction of such tax from the remuneration of the employee. (As to when compensation is earned, see article 7.)

ART. 6. *Items included as compensation.*—The following items are included in compensation with respect to employees and in analogous situations with respect to employee representatives—

(a) Salaries, wages, commissions, fees, bonuses, and any other remuneration in money or in something which may be used in lieu of money. The name by which remuneration is designated, the amount, and the basis upon which it is paid are immaterial. It may be paid upon the basis of piece work, a percentage of profits, or on a daily, hourly, weekly, monthly, annual, or other basis.

(b) Sick pay, vacation allowances, or back pay upon reinstatement after wrongful discharge.

(c) Allowance or reimbursement for traveling or other expenses incurred in the business of the employer to the extent of the excess of such amount, if any, over such expenses actually incurred and accounted for by the employee.

(d) Generally, premiums paid by an employer on a policy of life insurance covering the life of an employee if the employer is not a beneficiary under the policy. However, premiums paid by an employer on policies of group life

insurance covering the lives of his employees are not compensation if the employee has no option to take the amount of the premiums instead of accepting the insurance and has no equity in the policy (such as the right of assignment or the right to the surrender value on termination of his employment).

(e) Amounts deducted from the remuneration of an employee, including the amount of the employees' tax deducted pursuant to section 2 (b), constitute compensation paid to the employee.

(f) Payments made by an employer into a stock bonus, pension, or profit-sharing fund if such payments inure to the exclusive benefit of the employee and may be withdrawn by the employee at any time, or upon resignation or dismissal or if the contract for services requires such payment as part of the remuneration. Whether or not under other circumstances such payments constitute compensation depends upon the particular facts of each case.

ART. 7. *Compensation—when earned.*—Compensation is earned when and as an employee or employee representative, as such, performs services for which he is paid or for which there is a present or future obligation to pay, regardless of the time at which payment is made or is to be made. Remuneration paid for any period of absence from active service shall be deemed to have been earned in the month in which such absence from service occurred. (See articles 5 and 6.)

ART. 8. *Compensation—when paid.*—Compensation is deemed to be paid—

(1) when it is actually paid; or

(2) when it is constructively paid, that is, credited to the account of or set apart for an employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and made available to him so that it may be drawn upon at any time and its payment brought within his own control and disposition; or

(3) within the period for which a return of tax is required to be made if the compensation was earned during such period and is payable during the calendar month following such period. (See article 501, relating to periods for which a return of tax is required.)

Example (A).—During September, 1938 (which falls in a period for which a return of tax is required to be made), A is employed by employer B at a monthly salary of \$150, half of which is payable on the 25th of the month in which the services are performed and the other half on the 10th of the following month. Thus on October 10, A is paid \$75 which was earned during September. That \$75 is deemed to have been paid to A in September and should be included in B's return for the quarter July, August, and September.

Example (B).—During December, 1937 (which falls in a period for which a return of tax is required to be made), A is employed by employer B on the basis of a 6-day week at a weekly salary of \$60 payable on Saturday of each week. Thus on Saturday, January 1, 1938, A is paid \$60 for services performed during the week December 27, 1937, to January 1, 1938, inclusive. In such case five-sixths of that amount or \$50 is deemed to have been paid in December and should be included in B's return filed for the period in which December falls. The balance of A's salary for that week (\$10) should be included in the return filed for the period in which January, 1938, falls. (But see article 501 (b), relating to period covered by return where employer pays on a weekly basis. See article 7 as to when compensation is deemed earned; also article 202 relating to applicable rate of employees' tax.)

CHAPTER II—EMPLOYEES' TAX

SECTION 2 (A) OF THE ACT

(a) In addition to other taxes, there shall be levied, collected, and paid upon the income of every employee a tax equal to the following percentages of so much of the compensation of such employee as is not in excess of \$300 for any calendar month, earned by him after December 31, 1936—

1. With respect to compensation earned during the calendar years 1937, 1938, and 1939, the rate shall be 2 1/4 per centum;

2. With respect to compensation earned during the calendar years 1940, 1941, and 1942, the rate shall be 3 per centum;
3. With respect to compensation earned during the calendar years 1943, 1944, and 1945, the rate shall be 3 1/4 per centum;
4. With respect to compensation earned during the calendar years 1946, 1947, and 1948, the rate shall be 3 1/2 per centum;
5. With respect to compensation earned after December 31, 1948, the rate shall be 3 3/4 per centum;

ART. 201. Measure of employees' tax.—The employees' tax is measured by the amount of compensation earned by an individual as an employee for services rendered to one or more employers on and after January 1, 1937, excluding, however, the amount of such compensation in excess of \$300 which is earned by the employee for services performed during any one calendar month. (See articles 5, 6, and 7, relating to compensation.)

ART. 202. Rates and computation of employees' tax.—The rates of employees' tax applicable for the respective calendar years are as follows:

	Per cent
For the calendar years 1937, 1938, 1939	2 1/4
For the calendar years 1940, 1941, 1942	3
For the calendar years 1943, 1944, 1945	3 1/4
For the calendar years 1946, 1947, 1948	3 1/2
For the calendar year 1949 and subsequent calendar years	3 3/4

The employees' tax is computed by applying to the amount of the employee's compensation with respect to which the employees' tax is imposed the rate in effect at the time the compensation was earned.

SECTION 2 (B) OF THE ACT

(b) The tax imposed by this section shall be collected by the employer of the taxpayer by deducting the amount of the tax from the compensation of the employee as and when paid. If an employee is paid compensation by more than one employer with respect to any calendar month, then, under regulations made under this Act, the Commissioner of Internal Revenue may prescribe the proportion of the tax to be deducted by each employer from the compensation paid by him to the employee with respect to such month. Every employer required under this subsection to deduct the tax is hereby made liable for the payment of such tax and shall not be liable to any person for the amount of any such payment.

SECTION 607 OF THE REVENUE ACT OF 1934, MADE APPLICABLE BY SECTION 7 (C) OF THE ACT

Whenever any person is required to collect or withhold any internal-revenue tax from any other person and to pay such tax over to the United States, the amount of tax so collected or withheld shall be held to be a special fund in trust for the United States. The amount of such fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose.

ART. 203. Collection of, and liability for, employees' tax.—(a) The employer shall collect the employees' tax imposed with respect to the compensation not in excess of \$300 earned for any calendar month by each of his employees, by deducting or causing to be deducted the amount of such tax from such compensation as and when paid. (As to time when compensation is deemed to be paid, see article 8.)

(b) If during any calendar month an employee earns compensation from two or more employers, and if the aggregate of such compensation is more than \$300, the employees' tax shall be deducted by each employer from the amount of compensation with respect to which the employers' tax is imposed (see section 3 (a) and article 301 (b)), as and when such compensation is paid by him to the employee. Any undercollection or overcollection of employees' tax resulting from the employer's inability to determine, at the time compensation is paid, the correct amount with respect to which the deduction should be made shall be corrected in accordance with the provisions of Chapter VI, relating to adjustment of employees' tax and employers' tax, and Chapter VII, relating to credits and refunds.

(c) In collecting the employees' tax, the employer shall disregard any fractional part of a cent of such tax unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(d) The employer is liable for the employees' tax with respect to compensation paid by him subsequent to June 28, 1937, whether or not collected from the employee. If at

any time subsequent to that date the employer deducts less than the correct amount of employees' tax or fails to deduct any part of the tax, he is nevertheless liable for the correct amount of the tax. With respect to compensation earned by any employee for the period from January 1, 1937, to June 28, 1937, inclusive, the employer shall be liable for the employees' tax only to the extent that the employer has under his control at any time subsequent to June 28, 1937, amounts of compensation earned at any time by the employee, or amounts deducted by the employer from the compensation of the employee under the Act of August 29, 1935. Until collected from him, the employee is also liable for the employees' tax. Any employees' tax collected by or on behalf of an employer is a special fund in trust for the United States. An employer is not liable to any person for the amount of the employees' tax deducted by him and paid to the collector.

See Chapter V, relating to returns and payment of employees' tax; articles 601 and 602, relating to adjustment of employees' tax; articles 803, 804, and 805, relating to interest and penalties.

CHAPTER III—EMPLOYERS' TAX

SECTION 3 (A) OF THE ACT

(a) In addition to other taxes, every employer shall pay an excise tax with respect to having individuals in his employ, equal to the following percentages of so much of the compensation as is not in excess of \$300 for any calendar month paid by him to any employee for services rendered to him after December 31, 1936: *Provided, however,* That if an employee is paid compensation by more than one employer with respect to any such calendar month, the tax imposed by this section shall apply to not more than \$300 of the aggregate compensation paid to said employee by all said employers with respect to such calendar month, and each such employer shall be liable for that proportion of the tax with respect to such compensation which his payment to the employee with respect to such calendar month bears to the aggregate compensation paid to such employee by all employers with respect to such calendar month:

1. With respect to compensation paid to employees for services rendered during the calendar years 1937, 1938, and 1939, the rate shall be 2 1/4 per centum;

2. With respect to compensation paid to employees for services rendered during the calendar years 1940, 1941, and 1942, the rate shall be 3 per centum;

3. With respect to compensation paid to employees for services rendered during the calendar years 1943, 1944, and 1945, the rate shall be 3 1/4 per centum;

4. With respect to compensation paid to employees for services rendered during the calendar years 1946, 1947, and 1948, the rate shall be 3 1/2 per centum;

5. With respect to compensation paid to employees for services rendered after December 31, 1948, the rate shall be 3 3/4 per centum.

ART. 301. Measure of employers' tax.—(a) Except as provided in paragraph (b) of this article, the employers' tax is measured by the amount of compensation paid by an employer to his employees for services performed on and after January 1, 1937, excluding, however, the amount of compensation in excess of \$300 which is paid by the employer to any employee for services performed during any one calendar month.

(b) If an employer pays compensation to an employee who is also paid compensation by any other employer for services performed during the same calendar month, and if the aggregate compensation paid to such employee by all employers is more than \$300 for the calendar month, then there is included in the measure of each employer's tax only that proportion of \$300 which each employer's payment to the employee for the month bears to the aggregate compensation paid to such employee by all of his employers for that month. (See articles 5, 6, and 8, relating to "compensation," and article 603, relating to adjustments.)

Example 1.—A performs services during August, 1937, for employer X and is paid for the month a salary of \$400. X is liable for the employers' tax with respect to \$300.

Example 2.—A performs services during August, 1937, for employers X and Y and is paid for the month a salary of \$150 by each. Since A's aggregate compensation was not in excess of \$300, each employer is liable for the employers' tax with respect to \$150.

Example 3.—A performs services during August, 1937, for employers X and Y and is paid for the month a salary of

\$200 by X and a salary of \$300 by Y, or an aggregate compensation of \$500 for the month. In such case X pays two-fifths of A's aggregate compensation and Y pays three-fifths. X, therefore, is liable for the employers' tax with respect to two-fifths of \$300, or \$120, and Y is liable for the employers' tax with respect to three-fifths of \$300, or \$180.

ART. 302. *Rates and computation of employers' tax.*—The rates of employers' tax applicable for the respective calendar years are as follows:

	Per cent
For the calendar years 1937, 1938, 1939	2 1/4
For the calendar years 1940, 1941, 1942	3
For the calendar years 1943, 1944, 1945	3 1/4
For the calendar years 1946, 1947, 1948	3 1/2
For the calendar year 1949 and subsequent calendar years	3 3/4

The employers' tax is computed by applying to the amount of compensation with respect to which the employers' tax is imposed the rate in effect at the time of the performance of the services for which the compensation was paid.

CHAPTER IV—EMPLOYEE REPRESENTATIVES' TAX

SECTION 5 OF THE ACT

In addition to other taxes, there shall be levied, collected, and paid upon the income of each employee representative a tax equal to the following percentages of so much of the compensation of such employee representative as is not in excess of \$300 for any calendar month, earned by him after December 31, 1936:

1. With respect to compensation earned during the calendar years 1937, 1938, and 1939, the rate shall be 5 1/2 per centum;
2. With respect to compensation earned during the calendar years 1940, 1941, and 1942, the rate shall be 6 per centum;
3. With respect to compensation earned during the calendar years 1943, 1944, and 1945, the rate shall be 6 1/2 per centum;
4. With respect to compensation earned during the calendar years 1946, 1947, and 1948, the rate shall be 7 per centum;
5. With respect to compensation earned after December 31, 1948, the rate shall be 7 1/2 per centum.

The compensation of an employee representative for the purpose of ascertaining the tax thereon shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in section 1 (a) of this Act.

ART. 401. *Measure of employee representatives' tax.*—The employee representatives' tax is measured by so much of the compensation earned by an individual for services rendered on and after January 1, 1937, as an employee representative, as does not exceed \$300 for any calendar month. (See articles 5, 6, and 7, relating to compensation.)

ART. 402. *Rates and computation of employee representatives' tax.*—The rates of employee representatives' tax applicable for the respective calendar years are as follows:

	Per cent
For the calendar years 1937, 1938, 1939	5 1/2
For the calendar years 1940, 1941, 1942	6
For the calendar years 1943, 1944, 1945	6 1/2
For the calendar years 1946, 1947, 1948	7
For the calendar year 1949 and subsequent calendar years	7 1/2

The employee representatives' tax is computed by applying to the amount of compensation with respect to which the employee representatives' tax is imposed the rate in effect at the time of the performance of the services for which the compensation was earned.

CHAPTER V—RETURNS AND PAYMENT OF TAX

SECTION 7 (A), (B), (C), AND (D) OF THE ACT

(a) The taxes imposed by this Act shall be collected by the Bureau of Internal Revenue and shall be paid into the Treasury of the United States as internal-revenue collections.

(b) The taxes imposed by this Act shall be collected and paid quarterly or at such other times and in such manner and under such conditions not inconsistent with this Act as may be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. If a tax imposed by this Act is not paid when due, there shall be added as part of the tax (except in the case of adjustments made in accordance with the provisions of this Act) interest at the rate of 6 per centum per annum from the date the tax became due until paid.

(c) All provisions of law, including penalties, applicable with respect to any tax imposed by section 600 or section 800 of the Revenue Act of 1926, and the provisions of section 607 of the Revenue Act of 1934, insofar as applicable and not inconsistent with the provisions of this Act, shall be applicable with respect to the taxes imposed by this Act.

(d) In the payment of any tax under this Act, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

SECTION 602 OF THE REVENUE ACT OF 1926, MADE APPLICABLE BY SECTION 7 (C) OF THE ACT

Every person liable for any tax * * * shall make * * * returns under oath * * * and pay the taxes * * * to the collector for the district in which is located the principal place of business. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. * * *

SECTION 1102 OF THE REVENUE ACT OF 1926, MADE APPLICABLE BY SECTION 7 (C) OF THE ACT

(a) Every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as the Commissioner deems sufficient to show whether or not such person is liable to tax.

(c) The Commissioner, with the approval of the Secretary, may by regulation prescribe that any return required by any internal revenue law (except returns required under income or estate tax laws) to be under oath may, if the amount of the tax covered thereby is not in excess of \$10, be signed or acknowledged before two witnesses instead of under oath.

(d) Any oath or affirmation required by the provisions of this Act or regulations made under authority thereof may be administered by any officer authorized to administer oaths for general purposes by the law of the United States or of any State, Territory, or possession of the United States, wherein such oath or affirmation is administered, or by any consular officer of the United States.

SECTION 3165 OF THE UNITED STATES REVISED STATUTES, AS AMENDED

Every collector, deputy collector, internal-revenue agent, and internal-revenue officer assigned to duty under an internal-revenue agent, is authorized to administer oaths and to take evidence touching any part of the administration of the internal-revenue laws with which he is charged, or where such oaths and evidence are authorized by law or regulation authorized by law to be taken.

SECTION 3176 OF THE UNITED STATES REVISED STATUTES, AS AMENDED BY SECTION 1103 OF THE REVENUE ACT OF 1926 AND SECTION 619 (D) OF THE REVENUE ACT OF 1928

If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner of Internal Revenue may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be *prima facie* good and sufficient for all legal purposes. * * *

ART. 501. *Initial and quarterly returns of tax.*—(a) *General.*—For the period beginning January 1, 1937, and ending September 30, 1937, and for each subsequent period of three calendar months ending December 31, March 31, June 30, and September 30, each employer shall prepare a return of tax, in quadruplicate, on Form CT-1 and each employee representative shall prepare a return of tax, in quadruplicate, on Form CT-2. Each employer and employee representative is required to file his own return. Consolidated returns of parent and subsidiary corporations are not permitted.

(b) *Returns of employers required by State law to pay compensation on weekly basis.*—If any employer is required by the laws of any State to pay compensation weekly, the return of tax with respect to such compensation may, at the election of such employer, cover all pay-roll weeks which, or the major part of which, fall within the period for which a return of tax is required by paragraph (a) above. This provision shall not apply, however, to any pay-roll week which falls in two calendar years. Any employer who elects to file a return as provided in this paragraph shall notify the Commissioner in writing of such election and shall include therein a statement setting forth the facts which

entitle him to make the election. Such notice shall be in duplicate and shall be attached to the return for the first period to which such election applies. Any election so made shall be binding upon the taxpayer with respect to all returns subsequently made by him until the Commissioner authorizes or directs the taxpayer to make a return on a different basis. For the purpose of determining the time when compensation is paid in accordance with article 8 (3), and of determining the due date of a return in accordance with article 505, the calendar month following the period covered by the return of an employer making such election is the same calendar month which would be determinative for such purposes if the employer had not made the election.

Example: Employer A is required by State law to pay his employees within six days after the compensation is earned. In compliance with the State law, Employer A, for services rendered to him for the period September 27 to October 2, 1937, pays his employees on the last-named date. September, 1937, is the last month of a period for which a return of tax is required to be filed. Employer A may elect to include in the return required under paragraph (a) of this article for the period January 1 to September 30, 1937, the compensation paid to his employees for the week of September 27 to October 2, 1937, inclusive, although the compensation for October 1 and 2 falls within another period for which a return is required under paragraph (a) of this article. If, in this example, the pay-roll week ended on October 5, 1937, the compensation paid for the pay-roll week September 29 to October 5 would be included in the return period in which October falls although the compensation earned for September 29 and 30 fell in a prior return period under the general rule.

ART. 502. *Final returns.*—The last return on Form CT-1 for any person who ceases to be an employer, shall be marked "Final return." Such return shall be filed with the collector on or before the thirtieth day after the date of the final payment of compensation with respect to which the tax is imposed. The period covered by each such return shall be plainly written on the return, indicating the date of the final payment of compensation.

The last return on Form CT-2 for any person who ceases to be an employee representative shall be marked "Final return."

There shall be executed as part of each final return a statement giving the address at which the records required by article 806 will be kept and the name of the person keeping the records.

ART. 503. *Execution of returns.*—Each return on Form CT-1 shall be signed and (except as provided in this article) verified under oath or affirmation by (1) the individual, if the employer is an individual; (2) the president, vice president, or other principal officer, if the employer is a corporation; or (3) a responsible and duly authorized member or officer having knowledge of its affairs, if the employer is a partnership or other unincorporated organization. Each return on Form CT-2 shall be signed and (except as provided in this article) verified under oath or affirmation by the employee representative.

The oath or affirmation may be administered by any officer duly authorized to administer oaths for general purposes by the law of the United States or of any State or Territory, wherein such oath is administered, or by a consular officer of the United States. Returns executed abroad may be attested free of charge before a United States consular officer. If a foreign notary or other official having no seal acts as attesting officer, the authority of such attesting officer should be certified to by some judicial officer or other proper officer having knowledge of the appointment and official character of the attesting officer. If the tax shown to be payable by any return is \$10 or less, the return may be signed or acknowledged before two witnesses instead of under oath.

ART. 504. *Use of prescribed forms.*—Each return, together with any prescribed copies and supporting data, shall be filled out in accordance with the instructions contained thereon and the regulations applicable thereto. The prescribed forms may be obtained from collectors. A taxpayer

will not be excused from making a return for the reason that no form has been furnished to him. Application should be made to the collector for the prescribed forms in ample time to have the return prepared, verified, and filed with the collector on or before the due date. Returns shall be carefully prepared so as fully and clearly to set forth the data therein called for. Returns which have not been so prepared will not be accepted as meeting the requirements of the Act. In case the prescribed form is not available, a statement made by the taxpayer disclosing for the period for which a return is required the amount of compensation with respect to which the tax is imposed, together with the amount of tax due, may be accepted as a tentative return. If filed within the prescribed time the statement so made will relieve the taxpayer from liability to the penalty imposed for the delinquent filing of the return by section 3176 of the United States Revised Statutes, as amended, and section 406 of the Revenue Act of 1935 (see article 805), provided that without unnecessary delay such tentative return is supplemented by a return made on the proper form.

ART. 505. *Place and time for filing returns.*—Each return on Form CT-1 shall be filed with the collector for the district in which is located the principal place of business of the employer. Each return on Form CT-2 shall be filed with the collector for the district in which is located the legal residence or principal place of business of the employee representative. If the employer has no principal place of business in the United States or if the employee representative has no legal residence or principal place of business in the United States, the return shall be filed with the collector at Baltimore, Md.

The return for the period January 1, 1937, to September 30, 1937, inclusive, shall be filed on or before November 30, 1937, and the return for each quarterly period thereafter shall be filed on or before the last day of the calendar month following the period for which it is made. If such last day falls on Sunday or a legal holiday, the return may be filed on the next following business day. If placed in the mails, the return shall be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the date on which the return is required to be filed. As to additions to the tax in the case of failure to file the return within the prescribed time, see article 805.

ART. 506. *Payment of tax.*—The tax required to be reported on any return is due and payable to the collector without assessment by the Commissioner or notice by the collector, at the time fixed for filing the return. For provisions relating to interest, see article 803, and for provisions relating to penalties, see articles 804 and 805; also section 1114 of the Revenue Act of 1926, made applicable by section 7 (c) of the Act (see page 37).

ART. 507. *When fractional part of cent may be disregarded.*—In the payment of taxes to the collector a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. Fractional parts of a cent shall not be disregarded in the computation of taxes. See article 203 (c) for provisions relative to fractional parts of a cent in connection with the deduction of employees' tax from compensation.

CHAPTER VI—ADJUSTMENT OF EMPLOYEES' TAX AND EMPLOYERS' TAX

SECTION 2 (c) OF THE ACT

(c) If more or less than the correct amount of tax imposed by this section is paid with respect to any compensation payment, then, under regulations made under this Act by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, proper adjustments, with respect both to the tax and the amount to be deducted, shall be made, without interest, in connection with subsequent compensation payments to the same employee by the same employer.

SECTION 3 (b) OF THE ACT

(b) If more or less than the correct amount of the tax imposed by this section is paid with respect to any compensation payment, then, under regulations made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, proper adjustments with respect to the tax shall be made, without interest, in connection with subsequent excise-tax payments made by the same employer.

ART. 601. *Adjustments in general.*—Sections 2 (c) and 3 (b) of the Act provide in certain cases for the adjustment of errors in the payment of employees' tax and employers' tax without the formality of a claim being filed for refund or credit of an overpayment or without formal demand being made by the collector for payment of any additional amount due by reason of an underpayment. Not all corrections of erroneous collections or payments of tax, however, constitute "adjustments" within the meaning of the Act and these regulations. The various situations under which such adjustments shall be made are set forth in articles 602 and 603. Such articles also contain provisions relating to settlement other than by adjustment under certain circumstances set forth therein. Chapter VII deals further with settlement other than by adjustment. If an employer makes an erroneous collection of employees' tax from two or more of his employees, a separate adjustment must be made with respect to each employee. Thus, an overcollection of employees' tax from one employee may not be used to offset an undercollection of such tax from another. No interest shall be allowed or collected with respect to any erroneous collection or payment adjusted pursuant to article 602 or 603.

ART. 602. *Adjustment of employees' tax.*—(a) *Undercollections.*—(1) *Prior to filing of return.*—If no employees' tax or less than the correct amount of employees' tax is deducted from any payment of compensation to an employee and the error is discovered prior to the time the return of tax with respect to such compensation is filed with the collector, the employer shall nevertheless report on such return and pay to the collector the correct amount of employees' tax. While, in such case, the employer may reimburse himself by deductions from subsequent remuneration of the employee, such deductions do not constitute adjustments within the meaning of this article, and shall not be reported as adjustments on any return.

(2) *After return is filed.*—If no employees' tax or less than the correct amount of employees' tax is deducted from any payment of compensation to an employee, and the correct amount of such tax is not reported and paid pursuant to paragraph (1), the employer shall adjust the undercollection by deducting the amount thereof from the first payment of compensation made to such employee after the error is discovered. Amounts so deducted shall be reported as adjustments on the return for the quarter in which deducted. The undercollection shall be deducted from such first payment of compensation in addition to the employees' tax imposed with respect to such compensation. If the individual whose employees' tax was undercollected leaves the employ of the employer who failed to make the deduction and is entitled to no further remuneration from such employer, the undercollection is not adjustable under this article. In such case if the undercollection has not been reported and paid pursuant to paragraph (1), the employer shall report and pay the tax with the next quarterly return filed after discovery of the error. No undercollection of employees' tax shall be adjusted after receipt from the collector of formal notice and demand for payment thereof based upon assessment approved by the Commissioner, but the amount shall be paid pursuant to such notice and demand. While in such case the employer may reimburse himself by deductions from remuneration of the employee, such deductions do not constitute adjustments within the meaning of this article and shall not be reported as adjustments on any return.

(b) *Overcollections.*—(1) *Prior to filing of return.*—If an employer (A) collects more than the correct amount of employees' tax from any employee with respect to any quarterly period, and (B) reimburses the employee in the amount of the overcollection prior to the time the return for such period is filed with the collector, then the employer shall not report or pay to the collector the amount of the overcollection. Such reimbursement does not constitute an adjustment within the meaning of this article and shall not be reported as an adjustment on any return. However, every overcollection not repaid to the employee as provided in this paragraph must be reported and paid to the collector with

the return for the quarter in which the overcollection took place.

(2) *After return is filed.*—If an employer collects from any employee and pays to the collector more than the correct amount of employees' tax, the employer shall adjust the overcollection when the first payment of compensation is made to the employee after discovery of the error. The adjustment shall be made by applying the overcollection against the employees' tax which is imposed with respect to such first payment of compensation, and by deducting the remainder, if any, of the tax from such compensation. In case the overcollection is greater in amount than the employees' tax imposed with respect to such first payment of compensation, the balance shall be applied against the employees' tax imposed with respect to the next consecutive payments of compensation until the adjustment is completed. No adjustment shall be made under this paragraph after the expiration of four years after the overcollection was paid to the collector. A claim for credit or refund (in accordance with articles 701 and 702) may be filed within such 4-year period for such part of any overcollection as can not be adjusted within such period. After the employee leaves the employ of the employer who made an overcollection and is entitled to no further compensation from such employer, adjustments under this article are not permitted. In such case the employer may pay the amount of the overcollection, or such part thereof as remains unadjusted under this article, to the employee, and file a claim for credit or refund in accordance with articles 701 and 702. In lieu of paying such amount prior to filing a claim, the employer may obtain the employee's written consent to allowance of the claim.

ART. 603. *Adjustment of employers' tax.*—(a) *Underpayments.*—If no employers' tax or less than the correct amount of employers' tax is paid with respect to any payment of compensation, the employer shall adjust the error by (1) reporting the additional amount due by reason of the underpayment as additional tax on his next return filed after the discovery of the error and (2) paying the amount thereof to the collector at the time such return is filed. However, no underpayment shall be adjusted under this article after receipt from the collector of formal notice and demand for payment thereof based upon an assessment approved by the Commissioner, but the amount thereof shall be paid to the collector pursuant to such notice and demand.

(b) *Overpayments.*—If an employer pays more than the correct amount of employers' tax, the employer shall adjust the error by applying the excess payment as a credit against the tax due upon his next return filed after the discovery of the error. No overpayment shall be adjusted under this article after the expiration of four years after the date the overpayment was made to the collector.

CHAPTER VII—CREDITS AND REFUNDS

SECTION 4 OF THE ACT

If more * * * than the correct amount of the tax imposed by section 2 (a) or 3 (a) of this Act is paid or deducted with respect to any compensation payment and the overpayment * * * of the tax cannot be adjusted under section 2 (c) or 3 (b), the amount of the overpayment shall be refunded * * * in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations under this Act as made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

SECTION 1120 OF THE REVENUE ACT OF 1926, MADE APPLICABLE BY SECTION 7 (C) OF THE ACT

In the case of any overpayment or overcollection of any tax imposed by Title * * * VI, the person making such overpayment or overcollection may take credit therefor against taxes due upon any * * * return, and shall make refund of any excessive amount collected by him upon proper application by the person entitled thereto.

SECTION 3220 OF UNITED STATES REVISED STATUTES, AS AMENDED BY SECTION 1111 OF THE REVENUE ACT OF 1926 AND SECTION 619 (B) OF THE REVENUE ACT OF 1928

Except as otherwise provided * * * the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back

all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; * * *.

SECTION 3228 (A) OF UNITED STATES REVISED STATUTES, AS AMENDED BY SECTION 1112 OF THE REVENUE ACT OF 1926 AND SECTION 619 (C) OF THE REVENUE ACT OF 1928 AND SECTION 1106 OF THE REVENUE ACT OF 1932

(a) All claims for the refunding or crediting of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must * * * be presented to the Commissioner of Internal Revenue within four years next after the payment of such tax, penalty, or sum. The amount of the refund * * * shall not exceed the portion of the tax, penalty, or sum paid during the four years immediately preceding the filing of the claim, or if no claim was filed, then during the four years immediately preceding the allowance of the refund.

SECTION 3477 OF UNITED STATES REVISED STATUTES

All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same.

ART. 701. *Credit or refund in general.*—(a) A claim for credit or refund shall be made on Form 843 in accordance with the instructions printed on such form and in accordance with these regulations. It should be clearly indicated on the form whether the claim is for credit or refund. Each claim for credit must be attached to the return on which the credit is claimed. The prescribed form may be obtained from any collector. There shall be set forth under oath all grounds in detail and all facts alleged in support of the claim including the amount and date of each payment to the collector of the tax for which credit or refund is claimed, the name and address of the person who paid the tax to the collector, and the period covered by the return on which such tax was reported.

(b) If any tax is paid by or on behalf of an individual who thereafter dies and a claim for refund or credit is filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence shall be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary pays any tax and thereafter a claim for refund or credit is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim showing that the tax was paid by the fiduciary and that the latter is still acting. In such cases, if a refund or interest is to be paid, letters testamentary, letters of administration, or other evidence may be required, but should be submitted only upon the receipt of a specific request therefor. If a claim is filed by a fiduciary other than the one by whom the tax was paid, the necessary documentary evidence shall accompany the claim. The affidavit on the claim form may be made by the agent of the person assessed, but in such case a power of attorney shall accompany the claim.

(c) No credit or refund will be allowed for any tax (including interest or penalty, if any) which has been erroneously, illegally, or otherwise wrongfully collected, after the expiration of four years after the payment to the collector of tax, penalty, or interest, except upon one or more of the grounds set forth in a claim filed prior to the expiration of such 4-year period.

ART. 702. *Credit or refund of overpayments of tax under this Act which are not adjustable.*—(a) If more than the

correct amount of tax (including interest or penalty, if any) is paid to the collector and if the overpayment can not be adjusted pursuant to article 602 or 603, the person paying such tax to the collector may take a credit for such overpayment upon any return of tax subsequently filed or may file a claim for refund of such overpayment. In case a credit is taken under this article, a claim on Form 843 is not required, but the return on which such credit is taken shall have securely attached thereto a statement under oath, setting forth in detail the grounds and facts relied upon in support of the credit.

(b) In case a credit is taken on any return or a claim is filed by an employer for refund of employees' tax as provided by paragraph (a), the employer shall attach to the return on which a credit is taken, or shall include in the claim, a statement that he has repaid the tax to the employee or has secured the written consent of such employee to allowance of the refund or credit. In every such case the employer shall keep as part of his records the written receipt of the employee acknowledging payment or the written consent of the employee, whichever is used in support of the credit or refund.

(c) If (1) more than the correct amount of employees' tax is collected by an employer from an employee and paid to the collector; and (2) the employee leaves the employ of such employer; and (3) the employee does not receive reimbursement by way of adjustment or otherwise from such employer and does not authorize the employer to file a claim and receive refund or credit, then such employee may file a claim for a refund of such overpayment. (For claims filed by a legal representative, see article 701 (b).)

(d) In case a claim for refund is filed by an employee as provided by paragraph (c), the claimant shall attach to the claim a statement of a responsible officer of the employer giving the complete details of the overcollection, including the date and amount and a statement by such officer showing that the employer has not reimbursed the employee in the amount of the overcollection and showing the amount, if any, of any credit or refund of such overcollection claimed or to be claimed by such employer.

SECTION 7 (E) OF THE ACT

(e) Any tax paid under this Act by a taxpayer with respect to any period with respect to which he is not liable to tax under this Act shall be credited against the tax, if any, imposed by title VIII of the Social Security Act upon such taxpayer, and the balance, if any, shall be refunded. Any tax paid under title VIII of the Social Security Act by a taxpayer with respect to any period with respect to which he is not liable to tax under such title VIII shall be credited against the tax, if any, imposed by this Act upon such taxpayer, and the balance, if any, shall be refunded.

SECTION 9 (A) OF THE ACT

(a) The term "employment", as defined in subsection (b) of section 811 of title VIII of the Social Security Act, shall not include service performed by an individual as an employee as defined in section 1 (b) or service performed as an employee representative as defined in section 1 (c).

ART. 703. *Credit and refund of taxes paid under Title VIII of the Social Security Act for period during which liability existed under this Act.*—If any person pays any tax imposed by Title VIII of the Social Security Act with respect to any period for which he was not liable for such tax but was liable with respect to such period for a tax imposed under the Carriers Taxing Act of 1937, the amount paid as tax under Title VIII of the Social Security Act shall be credited against the amount of tax for which such person is liable under the Carriers Taxing Act of 1937 and the balance, if any, shall be refunded. Each person claiming a credit or refund of any such tax shall file a claim in accordance with article 701.

ART. 704. *Credit and refund of taxes paid under this Act for period during which liability existed under Title VIII of the Social Security Act.*—If any person pays any tax imposed by this Act with respect to any period for which he was not liable for such tax but was liable with respect to such period for a tax imposed under Title VIII of the Social Security Act, the amount paid as tax under this Act shall be credited against the tax for which such person is liable under Title VIII of the Social Security Act and the balance,

if any, shall be refunded. Each person claiming any such refund shall file a claim therefor in accordance with article 701.

SECTION 11 OF THE ACT

The provisions of this Act are in substitution for the provisions of the Act of August 29, 1935, as amended, entitled "An Act to levy an excise tax upon carriers and an income tax upon their employees, and for other purposes", which is hereby repealed. All moneys payable as and for taxes under such Act of August 29, 1935, and not heretofore paid shall cease to be payable and all proceedings pending for the recovery of any such moneys shall be terminated. All sums paid into the Treasury of the United States as and for taxes under such Act shall be refunded, except so much of the sums so paid as and for taxes with respect to compensation earned after December 31, 1936, as equals the taxes imposed by this Act with respect to the same persons and the same period, and the sums not required to be so refunded shall be retained in the Treasury of the United States and credited on taxes due and payable under this Act. All sums deducted by employers from the compensation of employees as and for taxes under such Act of August 29, 1935, which have not been paid into the Treasury of the United States shall be repaid by such employers to such employees, except so much of the sums so deducted as and for taxes in respect of compensation earned after December 31, 1936, as equals the taxes imposed and required to be deducted by this Act with respect to the same persons and the same period, and the sums not required to be so repaid shall be paid into the Treasury of the United States and thereupon shall be credited on taxes due and payable under this Act. No interest shall be allowed or paid with respect to any sum refunded, credited, or repaid under the provisions of this section.

ART. 705. *Credit and refund of taxes imposed under the Act of August 29, 1935, which were paid to the collector.*—(a) *General.*—Every claim for refund or credit under the provisions of this article shall be made on Form 843 in accordance with the provisions of this article and article 701. A claim which does not comply with these requirements will not be considered for any purpose as a claim for refund or credit. No interest shall be allowed with respect to any refunds or credits provided for by this article.

(b) *Representatives' tax.*—Every individual who as a representative, as defined in section 1 (b) of the Act of August 29, 1935, paid to the collector any representatives' tax under such Act with respect to remuneration earned prior to January 1, 1937, may obtain a refund of the amount of such tax. Every individual who as a representative, as defined in section 1 (b) of the Act of August 29, 1935, paid to the collector any representatives' tax under such Act with respect to remuneration earned during the period January 1, 1937, to June 28, 1937, inclusive, may obtain a refund of the amount of such tax if he establishes to the satisfaction of the Commissioner that the employees' tax or employee representatives' tax for such period, if any, for which he is liable under the Carriers Taxing Act of 1937 has been paid to the collector. If the employees' tax or the employee representatives' tax for which an individual is liable under the Carriers Taxing Act of 1937 for the period January 1, 1937, to June 28, 1937, inclusive, has not been paid, then so much of the representatives' tax paid by such individual under the Act of August 29, 1935, with respect to remuneration earned during such period as is not in excess of the tax for which the individual is liable under the Carriers Taxing Act of 1937 for the same period shall be credited against such tax under the Carriers Taxing Act of 1937. Such individual may obtain a refund of so much of the tax paid under the Act of August 29, 1935, as is in excess of the amount credited against his liability under the Carriers Taxing Act of 1937. Any person claiming a refund or crediting any amount under this paragraph shall file a claim in accordance with paragraph (a) of this article.

(c) *Carriers' tax for period March 2, 1936, to December 31, 1936.*—Every carrier, as defined in section 1 (a) of the Act of August 29, 1935, which paid any carriers' tax imposed by that Act with respect to remuneration earned prior to January 1, 1937, may obtain a refund of such tax, or may obtain a credit for the amount thereof against the employers' tax imposed upon such carrier as an employer under the Carriers Taxing Act of 1937, by filing a claim pursuant to paragraph (a) of this article.

(d) *Carriers' tax for period January 1, 1937, to June 28, 1937.*—Every carrier as defined in section 1 (a) of the Act of

August 29, 1935, which paid any carriers' tax imposed by that Act with respect to remuneration earned during the period January 1, 1937, to June 28, 1937, inclusive, shall credit against the amount of the employers' tax imposed for the same period upon such carrier as an employer under the Carriers Taxing Act of 1937, an equal amount of carriers' tax so paid under the Act of August 29, 1935. Each carrier required to credit any such tax shall file a claim therefor in accordance with paragraph (a) of this article. The carrier may obtain a refund of any balance of the carriers' tax paid under the Act of August 29, 1935, which remains after the allowance of the foregoing credit, or may obtain a credit for the amount of such balance against its employers' tax for any period subsequent to June 28, 1937, by filing a claim pursuant to paragraph (a) of this article.

(e) *Employees' tax for period March 2, 1936, to December 31, 1936.*—Every carrier as defined in section 1 (a) of the Act of August 29, 1935, which paid to the collector any employees' tax imposed by that Act upon its employees with respect to remuneration earned prior to January 1, 1937, may obtain a refund of such tax, or may obtain a credit for the amount thereof against the employees' tax imposed under the Carriers Taxing Act of 1937, by filing a claim pursuant to paragraphs (a) and (g) of this article.

(f) *Employees' tax for period January 1, 1937, to June 28, 1937.*—Every carrier as defined in section 1 (a) of the Act of August 29, 1935, which paid to the collector any employees' tax imposed by that Act upon its employees with respect to remuneration earned during the period January 1, 1937, to June 28, 1937, inclusive, shall credit against the amount of employees' tax imposed for the same period upon the same employees by the Carriers Taxing Act of 1937, an equal amount of the employees' tax so paid with respect to such employees, under the Act of August 29, 1935. Each carrier required to credit the amount of any such tax shall file a claim covering the amount thereof in accordance with paragraphs (a) and (g) of this article. The carrier may obtain a refund of any balance of employees' tax paid under the Act of August 29, 1935, which remains after the allowance of the foregoing credit, or may obtain a credit for the amount of such balance against the employees' tax imposed for any period subsequent to June 28, 1937, by filing a claim pursuant to paragraphs (a) and (g) of this article.

(g) *Statements required in connection with claims for refund or credit of employees' tax.*—(1) Every carrier as defined in section 1 (a) of the Act of August 29, 1935, which files a claim for refund or credit of any employees' tax paid under such Act shall include in the claim a statement that it has either repaid the tax to the employee and has the employee's written receipt acknowledging payment, or has secured the written consent of the employee to allowance of the claim. If the claim is made with respect to a deceased employee, the carrier shall set out in such statement that he has repaid the tax to the legal representative of the deceased employee and has such representative's written receipt acknowledging payment, or has secured his written consent to allowance of the claim. (See article 806 (e).)

(2) If any individual whose employees' tax was paid to the collector under the Act of August 29, 1935, desires to file a claim for refund, there shall be attached to such claim a statement of a responsible officer of the carrier which employed him showing the amount, if any, of any credit taken or to be taken by such carrier against any employees' tax imposed by the Carriers Taxing Act of 1937 upon such employee. If the claim for such refund is filed by the legal representative of a deceased individual, there shall be attached thereto a statement of a responsible officer of the carrier showing the amount, if any, of any credits taken or to be taken by such carrier against any employees' tax imposed by the Carriers Taxing Act of 1937 upon such deceased individual, and the evidence required by article 701 (b) of his authority to act as such legal representative.

ART. 706. *Employees' tax deducted from remuneration under the Act of August 29, 1935, and not paid to collector.*—(a) *For period March 2, 1936, to December 31, 1936.*—Every

carrier, as defined in section 1 (a) of the Act of August 29, 1935, which deducted the employees' tax imposed by such Act from remuneration earned by any individual prior to January 1, 1937, and which has not paid such tax to the collector, shall repay the tax to the individual from whom collected (or in the case of a deceased individual, to his legal representative). Each such carrier shall maintain records showing the amount of the tax thus repaid and the dates on which such amounts were repaid.

(b) *For period subsequent to December 31, 1936.*—(1) Every carrier, as defined in section 1 (a) of the Act of August 29, 1935, which deducted the employees' tax imposed by such Act from remuneration earned by any individual during any period subsequent to December 31, 1936, and which has not paid such tax to the collector, shall repay to the individual from whom collected (or in the case of a deceased individual, to his legal representative), any amount of such tax in excess of the employees' tax imposed by the Carriers Taxing Act of 1937 upon such individual for the same period. Each such carrier shall maintain records showing the amount of the tax thus repaid and the dates on which such amounts were repaid.

(2) So much of the sums not paid to the collector, which were deducted as tax from the compensation of an employee under the Act of August 29, 1935, with respect to compensation earned subsequent to December 31, 1936, as is not in excess of the employees' tax imposed by the Carriers Taxing Act of 1937 upon such employee for the same period, shall be paid to the collector the same as though such amounts had been deducted as and for employees' tax with respect to such compensation under the Carriers Taxing Act of 1937.

CHAPTER VIII—MISCELLANEOUS PROVISIONS

Assessment and Collection of Underpayments

SECTION 4 OF THE ACT

If * * * less than the correct amount of the tax imposed by section 2 (a) or 3 (a) of this Act is paid or deducted with respect to any compensation payment and the * * * underpayment of the tax cannot be adjusted under section 2 (c) or 3 (b). * * * the amount of the underpayment shall be collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations under this Act as made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

ART. 801. Assessment and collection of underpayments.—If any employees' tax or employers' tax is not paid to the collector when due, the Commissioner may, as the circumstances warrant, assess the tax (whether or not the underpayment is adjustable) or afford the employer opportunity to adjust the underpayment pursuant to article 602 or 603. Unpaid employers' tax or employees' tax may be assessed against the employer. Employees' tax not collected by the employer may also be assessed against the employee. If any employee representatives' tax is not paid when due, it shall be assessed against the employee representative.

The amount of any underpayment, together with interest and penalty, if any, will be collected, pursuant to section 3184 of the United States Revised Statutes and other applicable provisions of law, from the person against whom assessment is made. If any amount of an assessment has been previously reported and paid to the collector as an adjustment or otherwise, the person against whom the assessment is made is privileged to file with the collector a claim on Form 843 for abatement of such amount, together with interest and penalties thereon if included in the assessment.

If an employer pays employees' tax pursuant to an assessment against him without an adjustment having been made pursuant to article 602, reimbursement with respect to such payment is a matter to be settled between the employer and the employee. See article 803, relating to interest, and article 804, relating to penalty for failure to pay an assessment after notice and demand. See also article 802, relative to jeopardy assessment.

Jeopardy Assessment

SECTION 1105 OF THE REVENUE ACT OF 1932, AS AMENDED BY SECTION 510 OF THE REVENUE ACT OF 1934

(a) If the Commissioner believes that the collection of any tax (other than income tax, estate tax, and gift tax) under any provision of the internal-revenue laws will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest and penalties the assessment of which is provided for by law). Such tax, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the collector for the payment thereof. Upon failure or refusal to pay such tax, penalty, and interest, collection thereof by distraint shall be lawful without regard to the period prescribed in section 3187 of the Revised Statutes, as amended.

(b) The collection of the whole or any part of the amount of such assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of the amount collection of which is stayed, at the time at which, but for this section, such amount would be due.

SECTION 3187 OF THE UNITED STATES REVISED STATUTES, AS AMENDED

If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with five per centum additional thereto, and interest as aforesaid, by distraint and sale, in the manner hereafter provided, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid: * * *

ART. 802. Jeopardy assessment.—Whenever, in the opinion of the collector, it becomes necessary to protect the interests of the Government by effecting an immediate return and collection of the tax, the case should be promptly reported to the Commissioner by telegram or letter. The communication should recite the full name and address of the person involved, the amount of taxes due, the period involved, and a statement as to the reason for the recommendation, which will enable the Commissioner to assess the tax, together with all penalties and interest due. Upon assessment such tax, penalty, and interest shall become immediately due and payable, whereupon the collector will issue immediately a notice and demand for payment of the tax, penalty, and interest.

The collection of the whole or any part of the amount of the jeopardy assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount with respect to which the stay is desired and with such sureties as the collector may deem necessary. Such bond shall be conditioned upon the payment of the amount, collection of which is stayed, at the time at which, but for the jeopardy assessment, such amount would be due. In lieu of surety or sureties the taxpayer may deposit with the collector bonds or notes of the United States, or bonds or notes fully guaranteed by the United States, having a par value not less than the amount of the bond required to be furnished, together with an agreement authorizing the collector in case of default to collect or sell such bonds or notes so deposited.

Upon refusal to pay, or failure to pay or give bond, the collector will proceed immediately to collect the tax, penalty, and interest by distraint without regard to the period prescribed in section 3187 of the United States Revised Statutes, as amended.

Interest and Penalties

SECTION 7 (B) OF THE ACT

(b) * * * If a tax imposed by this Act is not paid when due, there shall be added as part of the tax (except in the case of adjustments made in accordance with the provisions of this Act) interest at the rate of 6 per centum per annum from the date the tax became due until paid.

SECTION 3184 OF UNITED STATES REVISED STATUTES

Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof. If such person does not pay the taxes within ten days after the serv-

ice or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of five per centum additional upon the amount of taxes, and interest at the rate of one per centum a month.

SECTION 404 OF THE REVENUE ACT OF 1935

Notwithstanding any provision of law to the contrary, interest accruing during any period of time after the date of the enactment of this Act upon any internal-revenue tax (including amounts assessed or collected as a part thereof) or customs duty, not paid when due, shall be at the rate of 6 per centum per annum.

ART. 803. *Interest.*—If the tax is not paid to the collector when due and is not adjusted under article 602 or 603, interest accrues at the rate of 6 per cent per annum.

ART. 804. *Penalty for failure to pay an assessment after notice and demand.*—(a) In case the taxpayer fails to pay to the collector the entire amount of any assessment of tax, penalty, or interest within a period of 10 days after the date of issuance of the form for first notice and demand, based on such assessment, there accrues under section 3184 of the United States Revised Statutes (except as provided in subdivision (b) of this article) a penalty of 5 per cent of the amount of such assessment remaining unpaid at the expiration of such period.

(b) If, within 10 days after the date of issuance of the first notice and demand, a claim for abatement of any amount of the assessment is filed with the collector who issued the form, the 5 per cent penalty does not attach with respect to such amount. If the claim is rejected in whole or in part and the amount rejected is not paid, the collector shall issue notice and demand for such amount. If payment is not made within 10 days after the date the collector issues the notice and demand, the 5 per cent penalty attaches with respect to the amount rejected. The filing of the claim does not stay the running of interest.

SECTION 3176 OF THE UNITED STATES REVISED STATUTES, AS AMENDED BY SECTION 1103 OF THE REVENUE ACT OF 1926 AND SECTION 619 (D) OF THE REVENUE ACT OF 1928

* * * In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

SECTION 406 OF THE REVENUE ACT OF 1935

In the case of a failure to make and file an internal-revenue tax return required by law, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, if the last date so prescribed for filing the return is after the date of the enactment of this Act, if a 25 per centum addition to the tax is prescribed by existing law, then there shall be added to the tax, in lieu of such 25 per centum: 5 per centum if the failure is for not more than 30 days, with an additional 5 per centum for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per centum in the aggregate.

ART. 805. *Penalties for delinquent or false returns.*—(a) *Delinquent returns.*—Unless the person required to file a return establishes to the satisfaction of the Commissioner that a reasonable cause exists for the delinquency, the failure to file such return on or before the due date causes to accrue a penalty equal to the following percentage of the taxes required to be reported thereon:

- (1) 5 per cent, if the return is filed on or before the thirtieth day after the due date;
- (2) 10 per cent, if the return is filed after such thirtieth day and on or before the sixtieth day after the due date;
- (3) 15 per cent, if the return is filed after such sixtieth day and on or before the ninetieth day after the due date;
- (4) 20 per cent, if the return is filed after such ninetieth day and on or before the one hundred and twentieth day after the due date;

(5) 25 per cent, if the return is filed after such one hundred and twentieth day or if the return is never filed by the person required to file it.

In computing the period of delinquency all Sundays and holidays after the due date are counted.

Every person filing a return after the due date shall securely attach to the return his statement under oath setting out in detail the reason for his delinquency. The collector shall forward the statement to the Commissioner with the return. The Commissioner will determine whether a penalty has been incurred and, if so, make the assessment.

(b) *False returns.*—If a false or fraudulent return is willfully made, the penalty under section 3176 of the United States Revised Statutes, as amended, is 50 percent of the total taxes due for the entire period involved, including any tax previously paid.

Additional Penalties

SECTION 1114 OF THE REVENUE ACT OF 1926, MADE APPLICABLE BY SECTION 7 (C) OF THE ACT

(a) Any person required under this Act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the cost of prosecution.

(b) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this Act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(d) Any person who willfully fails to pay, collect, or truthfully account for and pay over, any tax imposed by Titles IV, V, VI, VII, VIII, and IX, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of section 3176 of the Revised Statutes, as amended, or for any offense for which a penalty has been recovered under section 3256 of the Revised Statutes.

(e) Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

(f) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

SECTION 35 OF THE CRIMINAL CODE OF THE UNITED STATES, AS AMENDED

Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stock-

holder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder; * * * or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; * * * shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. * * *

Records

SECTION 1102 OF THE REVENUE ACT OF 1926, MADE APPLICABLE BY SECTION 7 (C) OF THE ACT

(a) Every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as the Commissioner deems sufficient to show whether or not such person is liable to tax.

SECTION 1104 OF THE REVENUE ACT OF 1926, AS AMENDED BY SECTION 618 OF THE REVENUE ACT OF 1928, MADE APPLICABLE BY SECTION 7 (C) OF THE ACT

The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

ART. 806. Records.—(a) *Records of employees.*—While not mandatory, it is advisable for each employee to keep permanent accurate records showing the name of each employer for which he performs services as an employee, the duration of employment by each, the amount of each payment of remuneration, the date of its receipt, and the amount of employees' tax deducted from each such payment.

(b) *Records of employers.*—The records of each employer shall show with respect to each employee, beginning with January 1, 1937—

- (1) the name and address of the employee,
- (2) the total amount and date of each payment of compensation to the employee (including any sum withheld therefrom as tax or for any other reason) and the period of services covered by such payment,
- (3) the amount of such payment of compensation with respect to which the tax is imposed, and
- (4) the amount of employees' tax withheld or collected with respect to such payment of compensation, and, if collected at a time other than the time such payment was made, the date collected.

If the total payment of compensation (paragraph (2), above) and the amount thereof with respect to which the tax is imposed (paragraph (3), above) are not equal, the reason therefor shall be made a matter of record. Accurate records of the details of every adjustment of employees' tax or employers' tax shall also be kept, including the date and amount of each adjustment. (See Chapter VI, relating to adjustments.)

(c) *Records of employee representatives.*—The records of each individual liable for employee representatives' tax shall show, beginning with January 1, 1937—

- (1) the name of each employee organization and each employer employing him, and

(2) the amount of compensation earned as an employee representative and as an employee, and the period for which earned.

(d) *Records of payments under the Act of August 29, 1935, and of overpayments under this Act.*—Every person claiming refund or credit of any payment of tax under the Act of August 29, 1935, or of any overpayment of tax, penalty, or interest, under this Act, shall keep a complete and detailed record of the alleged payment or overpayment. If claim is made under article 702 (a) for refund or credit of employees' tax, there shall also be kept as part of the records the evidence of repayment of the tax to the employee or the written consent of the employee obtained pursuant to the provisions of article 702 (b).

(e) *Records with respect to claims for refund of employees' tax imposed by the Act of August 29, 1935, and paid to collector.*—Every employer who files a claim for refund under article 705 (e) and (f) shall keep as part of his records the written receipts or written consents of employees obtained pursuant to the provisions of article 705 (g) (1).

(f) *Form of records.*—No particular form is prescribed for keeping the records required by this article. Each person required to keep records shall use such forms and systems of accounting as will enable the Commissioner to ascertain whether the taxes for which such person is liable are correctly computed and paid.

(g) *Place and period for keeping records.*—All records required by these regulations shall be kept, by the person required to keep them at some convenient and safe location accessible to internal revenue officers. Such records shall at all times be open for inspection by such officers. Records required by subdivisions (b) and (c) of this article shall be maintained for a period of at least four years after the date the tax to which they relate becomes due, or the date the tax is paid, whichever is later. Records required by subdivisions (d) and (e) of this article relating to a claim shall be maintained for a period of at least four years after the date the claim is filed.

Authority for Regulations

SECTION 12 OF THE ACT

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make and publish such rules and regulations as may be necessary for the enforcement of this Act.

In pursuance of section 12 of the Act and other provisions of the internal revenue laws, the foregoing regulations are hereby prescribed.

[SEAL]

CHAS T. RUSSELL,
Acting Commissioner of Internal Revenue.

Approved, October 12, 1937.

ROSWELL MAGILL,

Acting Secretary of the Treasury.

[F. R. Doc. 37-3030; Filed, October 14, 1937; 11:10 a. m.]

FEDERAL DEPOSIT INSURANCE CORPORATION.

REPLACEMENT OF SERVICE OF PROCESS AGENT

Pursuant to the provisions of the fourth paragraph of subsection (j) of Section 12B of the Federal Reserve Act, as amended, the Board of Directors of the Federal Deposit Insurance Corporation has designated Examiner Howard V. Williams, Orlando, Florida, as agent for the Corporation in the State of Florida, to replace Examiner William S. Anderson, for the purpose of receiving service of process, such appointment to be upon the basis with respect to compensation and tenure as all such appointments heretofore made.

I hereby certify that the foregoing appointment was made pursuant to a resolution of the Board of Directors of the Federal Deposit Insurance Corporation adopted on August 18, 1937.

[SEAL]

AGNES C. MURPHY,
Acting Secretary.

FEDERAL TRADE COMMISSION.

United States of America Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 12th day of October, A. D. 1937.

Commissioners: William A. Ayres, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, Robert E. Freer.

[Docket No. 3125]

IN THE MATTER OF THE ROSS ROY SERVICE, INC., A CORPORATION, AND KELVINATOR CORPORATION, A CORPORATION

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 U. S. C. A., Section 41),

It is ordered, That Miles J. Furnas, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin Friday, October 22, 1937, at ten o'clock in the forenoon of that day (eastern standard time) in Room 921, Federal Building, Detroit, Michigan.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The Examiner will then close the case and make his report.

By the Commission.

[SEAL]

OTIS B. JOHNSON, Secretary.

[F. R. Doc. 37-3027; Filed, October 13, 1937; 2:30 p. m.]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 12th day of October, A. D. 1937.

Commissioners: William A. Ayres, Chairman; Garland S. Ferguson, Jr., Charles H. March, Ewin L. Davis, Robert E. Freer.

[Docket No. 3170]

IN THE MATTER OF LOUIS J. WHITMARSH, TRADING AS RITEWAY SALES

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 U. S. C. A., Section 41),

It is ordered That Miles J. Furnas, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered That the taking of testimony in this proceeding begin on Monday, October 18, 1937, at ten o'clock in the forenoon of that day (eastern standard time), in room 4083, New Post Office Building, Cleveland, Ohio.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report.

By the Commission.

[SEAL]

OTIS B. JOHNSON, Secretary.

[F. R. Doc. 37-3028; Filed, October 13, 1937; 2:30 p. m.]

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 13th day of October, 1937.

[File No. 1-427]

IN THE MATTER OF KRESGE DEPARTMENT STORES, INC., 8% CUMULATIVE PREFERRED STOCK, \$100 PAR VALUE

ORDER POSTPONING HEARING

The New York Stock Exchange, pursuant to Section 12 (d) of the Securities Exchange Act of 1934, as amended, and Rule JD2 promulgated thereunder, having made application to the Commission to strike from listing and registration the 8% Cumulative Preferred Stock, \$100 Par Value, of Kresge Department Stores, Inc.; and

The Commission having ordered that the matter be set down for hearing on October 13, 1937,¹ in Washington, D. C.; and

Said issuer having requested a postponement of said hearing;

It is ordered, That said hearing be postponed until 10:00 A. M. on Tuesday, October 26, 1937, in Room 1101, Securities and Exchange Commission Building, 1778 Pennsylvania Avenue NW, Washington, D. C., and continue thereafter at such times and places as may be determined by the Commission or its officer presiding at said hearing.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR, Secretary.

[F. R. Doc. 37-3033; Filed, October 14, 1937; 12:46 p. m.]

VETERANS' ADMINISTRATION.

REVISION OF REGULATIONS

PENSIONS—RESERVE OFFICERS AND ENLISTED PERSONNEL

Persons Included in the Acts in Addition to Commissioned Officers and Enlisted Men

R-1001 (K). Members of training camps authorized by law.—Members of training camps authorized by Section 54 of the National Defense Act, are included. Members of the National Guard ordered to active duty for training are not, under Section 112 of the National Defense Act of June 3, 1916, as amended June 15, 1933, entitled to pension. Reserve officers and members of the enlisted reserves of the United States Army, Navy, or Marine Corps ordered to active duty including duty for training, are entitled to pension under Public No. 159, 75th Congress (October 14, 1937).

Effective Dates of Awards of Disability Compensation or Pension

R-1212 (A). Initial awards of disability compensation or pension will be payable in accordance with the provisions of Veterans Regulation No. 2 (a), Part I, Paragraph I, provided an appropriate claim therefor has been filed and, if incomplete, the necessary evidence to complete such claim is submitted within one year from the date of request therefor: *Provided, however*, That no award of disability compensation or pension under Public No. 2, 73rd Congress, will be effective prior to March 20, 1933; no pension under Regulation No. 1 (a), Part II, as amended by Public No. 159, 75th Congress, Act of June 23, 1937, shall be effective prior to the date of claim or June 23, 1937, whichever is the later: *And provided further*, That no award of disability compensation under Title III, Public No. 141, 73d Congress, will be effective prior to March 28, 1934 (October 14, 1937).

Concurrent Payment of Benefits to Same Person

R-1296 (A). Notwithstanding the provisions of Section 4715, Revised Statutes, and Veterans Regulation No. 10, Paragraph XIII, a person in receipt of death compensation or pension either under the reenacted pension statutes, the Veterans Regulation No. 1 series, or Title III, Public No. 141, 73d Congress, or Public No. 484, 73d Congress, may also, if otherwise entitled, receive disability compensation under Public No. 141, 73d Congress, on account of his or her own service during the World War (A. D. 325, 335).

(B) For the purposes of Veterans Regulation No. 1 (a), Part II, Paragraph I, as amended by Public No. 159, 75th

Congress, (Act of June 23, 1937) pension shall not be paid concurrently with active duty pay or United States employees compensation. Where a person who is eligible for pension is also eligible for the benefits of the United States employees compensation act he shall elect which benefit he shall receive (October 14, 1937).

[SEAL]

FRANK T. HINES,

Administrator of Veterans' Affairs.

[F. R. Doc. 37-3031; Filed, October 14, 1937; 11:18 a. m.]

REVISION OF REGULATIONS

APPEALS

9804. Cooperation with claimant in developing evidence and hearings in connection with appeals.—(A). (1) Because of the finality of the decisions of the board of veterans appeals, it will readily be seen that it is of utmost importance that every effort be made to secure all relevant evidence and insure the adequacy of the appeal and the proper preparation of the case. The two-fold duty of adjudicating agencies to the Government and to the claimant, under the policy of the Veterans Administration, requires that all proper assistance be accorded to the claimant in the prosecution of his claim. Such assistance will be given whole-heartedly and fully in the development and preparation of claims in appeal status so that all available evidence may be secured and the claimant will be thoroughly advised of the steps necessary to present his case properly for appellate consideration.

(2) This assistance will be extended in the preparation of appeals on all questions that may properly be referred to the board of veterans appeals. The adequacy of an appeal in the individual case will depend on the facts of record, but all appeals will be given equal consideration in this regard.

(3) The employees authorized in R. & P. R-9805, to execute certificates of adequacy may utilize every facility at their disposal to secure any additional evidence that may be deemed necessary to insure a fair and complete presentation of the facts involved. Efforts should first be made, however, to secure such evidence by correspondence but resort may be had to personal contacts wherever necessary.

(4) The certificate of adequacy will not be executed until all pertinent evidence available is secured but if the claimant or his authorized representative should insist on the consideration of the appeal without the submission of any further evidence that might be indicated, a certificate of adequacy will be executed but a notation will be made thereon to the effect that such certificate is being executed at the insistence of the claimant or his representative.

(B) (1) In order to insure the complete development of the claim from the standpoint of rating for compensation or pension purposes, when an appeal is filed from a rating decision, the case file, together with the appeal, will be referred to the rating agency of original jurisdiction for review. The rating agency will review the case to determine whether its previous decision should be affirmed and whether any new issues have been raised by the veteran or his representative or whether all the claimant's contentions have been properly considered and adequately disposed of.

(2) If it is determined that no new rating issues have been raised in connection with the appeal and that all contentions or allegations made by the claimant or his representative have been properly and adequately disposed of, the following certificate will be executed by the rating board:

"It is hereby certified that all material facts pertinent to the rating have been developed, that all assertions and representations advanced by the veteran and in his behalf have been considered and the issues determined."

(3) In the event it is found that new allegations or contentions have been made either by the claimant or his representative with reference to diseases or injuries not previously considered, or grounds or reasons for service connection or increased ratings not previously set forth, the rating agency will carefully review the case in the light of these contentions and render a new rating decision disposing of each question separately by a definite finding. This decision will be made on Form 564 and will conclude with the following statement: "Reviewed pursuant to R. & P. 1325."

(4) In the event the rating board of original jurisdiction finds that further development of the evidence is necessary, it will indicate in detail to the authorization unit, the nature of the evidence desired or the steps to be taken to further develop the case. For the purpose of this review, the rating agencies of original jurisdiction may authorize physical examinations if such action is deemed necessary. In exercising this authority, however, the rating agencies are expected to use discretion and will bear in mind the policy of the Veterans' Administration, to avoid unnecessary physical examinations.

(5) Form P-8 will not be executed in cases where the appeal is from a rating decision until the case has been reviewed by the rating board in accordance with the foregoing provisions.

(C). (1) When the case has been fully developed and the entire evidence reviewed in accordance with the provisions of this section, if the claimant has executed a power of attorney in favor of an accredited service organization, the representative of such organization will be notified to appear before the rating board, if he wishes to do so, for a formal hearing before the Certificate of Adequacy is executed. This hearing will be held when practicable and convenient before the rating board which rendered the decision from which the appeal was entered, and will be in lieu of a formal hearing before the board of veterans appeals, except in unusual cases, which may require the special attention of the accredited organization's headquarters in Washington, D. C. Generally, no further hearing before the board of veterans appeals will be necessary where the representative of the accredited service organization states the basis of the appeal and the nature of the relief sought at the hearing before the rating board, and otherwise properly represents the veteran's interests.

(2) A record of this hearing will be made and incorporated in the case file for consideration by the board of veterans appeals.

Upon the conclusion of the hearing, the representative of the service organization will be requested to execute Form 646, Certificate of Appearance before Rating Board on Appeal to Board of Veterans Appeals. The answers to the three questions propounded on this form will be definite and unequivocal. If there is any doubt with reference to the development of the evidence, the hearing should be utilized to develop leads and information concerning any additional evidence that might be available and the manner in which such evidence may be obtained.

(3) The formal hearings before the rating board, provided for herein, will not be used as a basis for reversing the decision of the rating board from which the appeal was entered, except in case of clear and unmistakable error, or in accordance with existing procedure for amending or reversing a prior rating decision. In the event, however, the prior decision from which the appeal was entered is amended or reversed and the benefit sought by the claimant is granted, appropriate action will be taken to cancel the appeal (September 15, 1937) (V. R. No. 2-series).

[SEAL]

FRANK T. HINES,
Administrator of Veterans Affairs.

[F. R. Doc. 37-3032; Filed, October 14, 1937; 11:18 a. m.]